

CLERK'S COP

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 676

UNITED STATES OF AMERICA EX REL. H. H. SIMPSON, PETITIONER,

vs.

RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, AND CHARLES C. MOORE, COMMISSIONER OF THE GENERAL LAND OFFICE.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED JANUARY 22, 1931

CERTIORARI GRANTED MARCH 2, 1931

(35,598)

(35,598)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 676

UNITED STATES OF AMERICA EX REL. H. H. SIMPSON, PETITIONER,

vs.

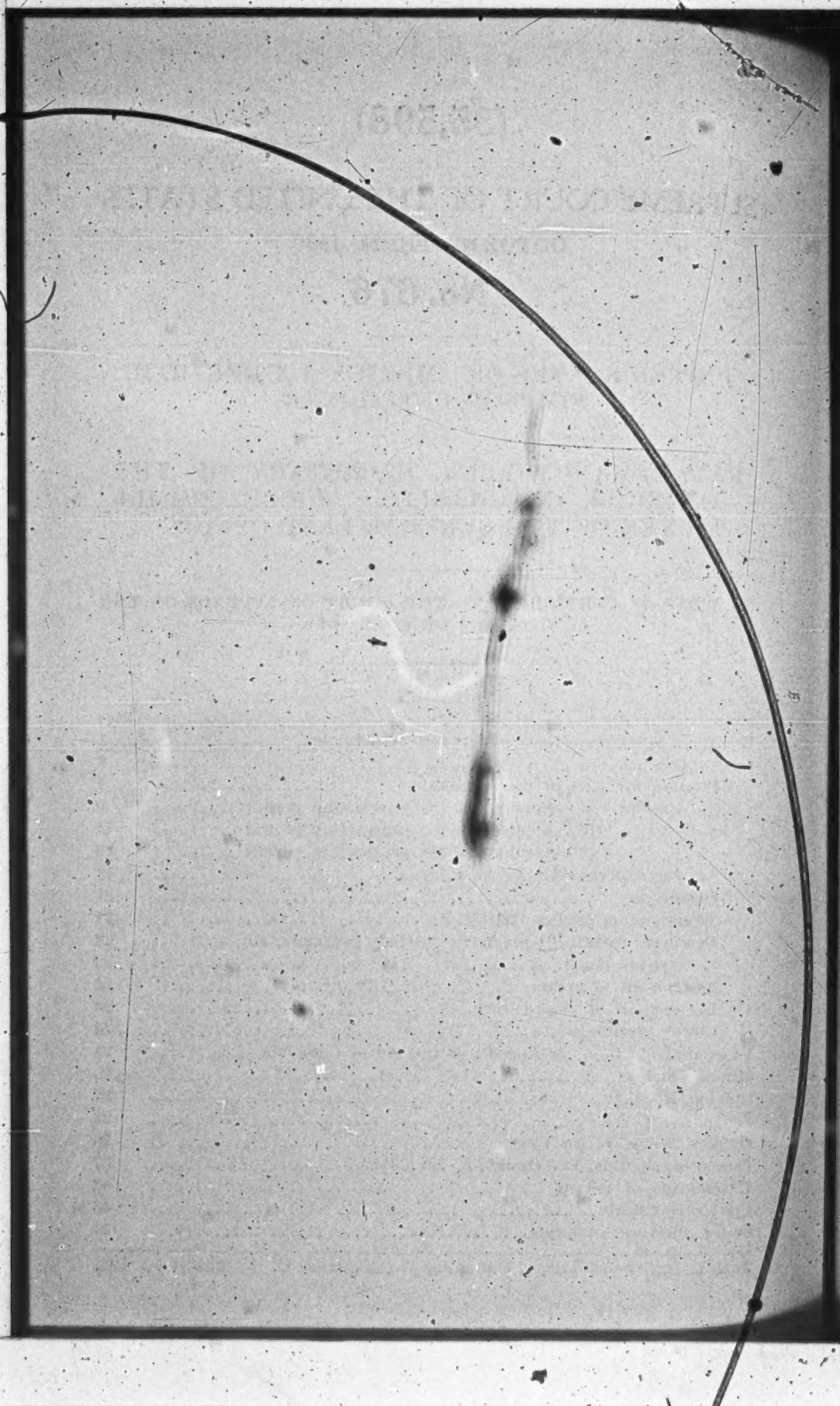
RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, AND CHARLES C. MOORE, COMMISSIONER OF THE GENERAL LAND OFFICE.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

	Page
Record from supreme court of District of Columbia	1
Caption	1
Petition for writ of mandamus	1
Exhibit "A"—Application for prospecting permit	9
"B"—Application for prospecting permit	11
"C"—Application for prospecting permit	12
Answer and response to the rule	13
Demurrer	21
Memorandum opinion, Bailey, J	21
Demurrer sustained; judgment ordered; judgment, etc	22
Appeal noted	22
Assignment of errors	22
Designation of record	23
Clerk's certificate	23
Proceedings in Court of Appeals of District of Columbia	25
Minute entries	25
Opinion, Robb, J	27
Judgment	28
Opinion, Robb, J., No. 5241	29
Dissenting opinion, Van Orsdel, J., No. 5241	37
Designation of record	42
Clerk's certificate	43
Order allowing certiorari	44

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 10, 1931



A Supreme Court of the District of Columbia

UNITED STATES OF AMERICA EX REL. H. H. Simpson, petitioner *v.* RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, and Charles C. Moore, Commissioner of the General Land Office, respondents	At law No. 77788

United States of America,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 In the Supreme Court of the District of Columbia

UNITED STATES OF AMERICA EX REL. H. H. Simpson, 463 I. W. Hellman Building, Los Angeles, California, petitioner *v.* RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, and Charles C. Moore, Commissioner of the General Land Office, respondents	At law No. 77788

Petition for writ of mandamus

Filed Feb. 20, 1930

* * * * * * *

To the honorable Judges of said Court:

Now comes H. H. Simpson, hereinafter referred to as "petitioner," and complaining of the respondents, Ray Lyman Wilbur, Secretary of the Interior (more particularly hereinafter referred to as "respondent Secretary"), and Charles C. Moore, Commissioner of the General Land Office (more particularly hereinafter referred to as "respondent Commissioner"), respectfully repesents to the court as follows:

That the petitioner is now, and at all times hereinafter mentioned was, a citizen of the United States of America, and a resident of the State of California, and that his address is 463 I. W. Hellman Building, in the city of Los Angeles, in said State.

2 That the respondent Secretary is now, and at all times hereinafter mentioned was, Secretary of the Interior, Department of the Interior, of and for the United States (and is complained of in his capacity as such Secretary), duly commissioned and acting as such Secretary, pursuant to the Constitution and laws of the United States; that said respondent Secretary has offices in the city of Washington, District of Columbia; and that among other duties imposed upon him by the laws of the United States is, and was at all times hereinafter mentioned, that of administering a certain act of Congress approved February 25, 1920 (41 Stat. 437, Ch. 85), to wit,

"An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," popularly known as, and hereinafter called, the "Oil lands leasing act."

That the respondent commissioner is now, and at all times hereinafter mentioned was, Commissioner of the General Land Office, Department of the Interior, of and for the United States (and is complained of in his capacity as such Commissioner) duly commissioned and acting as such commissioner, pursuant to the Constitution and laws of the United States; that said respondent commissioner has offices in the city of Washington, District of Columbia; and that among other duties imposed upon him by the laws of the United States is that of performing, under the direction of the respondent Secretary, executive duties respecting the public lands of the United States.

I. FIRST GROUND FOR WRIT

1. That on or about May 25, 1929, petitioner caused to be filed in the proper district land office of said Department of the Interior, located at Sacramento, California, an application (a copy of which is attached hereto, made a part hereof and marked "Exhibit A") for
3 a permit to prospect for oil and gas upon certain land located in the State of California and within the territory of said district, setting forth (a) the name and address of your petitioner as the applicant therein; (b) proof by affidavit of your petitioner of his native-born citizenship in the United States of America and his residence in the State of California; (c) a statement that the applicant was not the holder of and had no direct or indirect interest in any other subsisting permit to prospect for minerals on lands of the United States, and had no other application pending for such a permit, and that he had no interest, either direct or indirect in any other application for a permit; (d) a proper description of the land for which the permit was desired; (e) a statement that to the best of petitioner's knowledge and belief the land applied for was not within any known geological structure of a producing oil or gas field; and (f) containing at least three references as to the petitioner's reputation and business standing.

2. That said application complied in every respect with the terms of the aforesaid oil lands leasing act, and with all rules and regulations of the Department of the Interior lawfully prescribed thereunder.

3. That said application was filed in petitioner's own interest, and was not filed in the interest of any other person or persons, association or corporation.

4. That all of the statements set forth in said application were true at the time of the filing thereof, and were also true at all other times herein mentioned, and are now true.

5. That petitioner paid to the respondents, by paying to said district land office, at the time of filing said application, the filing fee required by law.

4 6. That the land described in said application in respect of which petitioner desired said prospecting permit, which land is the same as that in respect of which Petitioner in this proceeding desires that a permit issue to prospect for oil and gas, is as follows:

All of section 31, township 24, south range 20 east, M. D. B. & M., consisting of 655.08 acres, more or less.

7. That said land described in paragraph 6 above is not covered by any prior existing claims, adverse to those of this petitioner, is not within the limits of a known geologic structure of a producing oil or gas field, and is subject in all respects to prospecting pursuant to the aforesaid oil lands leasing act.

8. That thereafter, on or about May 27, 1929, the register of said district land office, acting for the respondents herein, returned to petitioner his said application and filing fee, together with a letter of refusal to file said application, which said letter was in words and figures as follows, to wit:

UNITED STATES DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Sacramento, Calif., May 27, 1929.

H. H. SIMPSON,
463 I. W. Hellman Bldg., Los Angeles, Calif.

DEAR SIR: Reference is made to your application for oil and gas prospecting permit for all of section 31, T. 24 S., R. 20 E., M. D. M.

You are advised that by his order of March 20, 1929, Secretary of the Interior directed as follows;

"Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929 and will reject all pending applications for permits."

Accordingly, your application and post-office money order for $10.00, which was tendered in payment of fee, are returned herewith.

Yours very truly,

JOHN C. ING, *Register.*

"M
"2 incls.

9. Your petitioner is not now, nor at any of the times herein mentioned was he, the owner of or the holder of any permit to prospect for oil and gas upon any public lands of the United States of America, nor interested directly or indirectly in any such permit or application therefor, except as herein mentioned, nor a stockholder in any corporation holding such a permit or making any such application therefor.

10. That prior to the filing by petitioner of the application hereinbefore referred to, no subsisting permit had been granted covering any portion of the land therein described, and no other application concerning the same land, or any portion thereof, or concerning the permit requested by petitioner, was filed by any other person whatever, nor has any such application been filed or permit granted since said date.

11. That within the proper time, on or about May 31, 1929, petitioner filed an appeal in the local district land office of the Department of the Interior, at Sacramento, California, from the said action of the register in refusing to receive for filing petitioner's said oil and gas prospecting permit application. That said appeal was based upon the ground that there was no authority of law for the action taken by said register in refusing to accept said application. That the respondents, contrary to law and in abuse of any

discretion which they may have under law, denied the appeal of petitioner, and have refused, and now refuse, to consider the same.

6 12. That petitioner has complied with all of the provisions of the aforesaid oil lands leasing act, and any and all lawful regulations prescribed thereunder, and stands ready, willing, and able to pay all fees and do any and all acts and things required under the terms of said act, and to comply with any and all reasonable and lawful regulations prescribed thereunder. That respondents have each of them failed, neglected, and refused, and now fail and refuse to grant to your petitioner the permit applied for by him. That the sole reason given by respondents for so doing is the claim by respondents that under the aforesaid oil lands leasing act the granting of permits or licenses to prospect for oil or gas upon the public lands is discretionary with the Secretary of the Interior.

13. That petitioner, having complied with all provisions of law relevant thereto, and all reasonable regulations prescribed thereunder, is entitled, as a matter of law, to said permit. That no such discretion is given to the Secretary of the Interior under the terms of said oil lands leasing act, or any other law of the United States, and any regulation, order, or action purporting to assert that the Secretary of the Interior has such authority was and is void, and in violation of petitioner's rights under the Constitution and laws of the United States, and particularly under the terms of the said oil lands leasing act, and constitutes an erroneous interpretation of said oil lands leasing act.

14. By reason of said action of respondents in failing and refusing to grant the permit applied for by petitioner, your petitioner has been deprived of the rights accorded to him by law, and particularly by the terms of said oil lands leasing act, and the Constitution of the United States, to his great and irreparable damage.

15. That petitioner has no plain, speedy, or adequate remedy
7 in the ordinary course of law, for that there is no appeal provided by law from the decision of the Secretary of the Interior, and for that the issuance of the permit applied for by petitioner was and is enjoined upon the respondent Secretary by law and his duties with regard thereto are ministerial.

16. That the decision of this matter involves the interpretation of the aforesaid oil lands leasing act and the rights of citizens of the United States thereunder, and under the Constitution of the United States, and the rights and duties of the officials of the United States in connection therewith.

17. That no decision has yet been rendered in any of the courts of the United States upon the question herewith presented. That the rights of the citizens of the United States, and the duties of the officials of the United States in connection therewith are in doubt. That the questions involved herein are of great public moment, and are of great importance to the citizens of the United States.

18. That a speedy and final decision upon these questions is of vital necessity to the citizens of the United States, and the officials of the Government of the United States.

II. SECOND GROUND FOR WRIT

19. That on or about May 25, 1929, petitioner caused to be filed in the proper district land office of said Department of the Interior, located at Sacramento, California, an application (a copy of which is attached hereto, made a part hereof and marked "Exhibit B") for a permit to prospect for oil and gas upon certain land located in the State of California and within the territory of that district, setting forth (a) the name and address of your petitioner as the applicant therein; (b) proof by affidavit of your petitioner of his native-born citizenship in the United States of America and
8 his residence in the State of California; (c) a statement that the applicant was not the holder of, and had no direct or indirect interest in or to, any subsisting permit to prospect for minerals on lands of the United States, and had no other application pending for such a permit, and that he had no interest, either direct or indirect, in any other application for a permit, except for the parcels of land referred to in paragraph 6 of this petition; (d) a proper description of the land for which the permit was desired; (e) a statement that to the best of petitioner's knowledge and belief the land applied for was not within any known geological structure of a producing oil or gas field; and (f) containing at least three references as to petitioner's reputation and business standing.

20. That said application complied in every respect with the terms of the aforesaid oil lands leasing act and with all rules and regulations of the Department of the Interior lawfully prescribed thereunder.

21. That said application was filed in petitioner's own interest, and was not filed in the interest of any other person or persons, association or corporation.

22. That all of the statements set forth in said application were true at the time of the filing thereof, and were also true at all other times herein mentioned, and are now true.

23. That petitioner paid to respondents, by paying to said district land office, at the time of filing said application, the filing fee required by law.

24. That the land described in said application in respect of which the petitioner desired said prospecting permit, which land is the same as that in respect of which the petitioner in the second ground for writ in this proceding desires that a permit issue to prospect for oil and gas, is as follows:
9 Lots 9 and 10 section 30, east ½ of the southeast ¼ and northwest ¼ of the southeast ¼ section 19, township 27 south, range 19 east, M. D. M., consisting of 203.98 acres.

25. That said land described in paragraph 24 above is not covered by any prior existing claims, adverse to those of this petitioner, is not within the limits of a known geologic structure of a producing oil or gas field, and is subject in all respects to prospecting pursuant to the aforesaid oil lands leasing act.

26. That thereafter, on or about May 27, 1929, the Register of said District Land Office, acting for the respondents herein, returned

to petitioner his said application and filing fee, together with a letter of refusal to file said application, which said letter was in words and figures as follows, to-wit:

UNITED STATES DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Sacramento, California, May 27, 1929.

H. H. SIMPSON,
463 I. W. Hellman Bldg.,
Los Angeles, Calif.

DEAR SIR: Reference is made to your oil and gas permit application for portions of sections 19 and 30, T. 27 S., R. 19 E., M. D. M.

You are advised that by his order of March 20, 1929, the secretary of the Interior directed as follows:

"Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929, and will reject all pending applications for permits."

Accordingly, your application and post office money order for $10.00, which was tendered in payment of fee, are returned herewith.

Yours very truly,

JOHN O. ING, *Register.*

M
2 incls.

27. That within the proper time, on or about May 31, 1929, petitioner filed an appeal in the local district land office of the Department of the Interior, at Sacramento, California, from the said action of the register in refusing to receive for filing petitioner's said oil and gas prospecting permit application. That said appeal was based upon the ground that there was no authority of law for the action taken by said register in refusing to accept said application. That the respondents, contrary to law and in abuse of any discretion which they may have under law, denied the appeal of petitioner, and have refused, and now refuse, to consider the same.

28. Petitioner realleges and reaffirms, with the same force and effect as though again set forth in full, all of the allegations contained in paragraphs 9, 10, 12, 13, 14, 15, 16, 17, and 18, of the first ground for writ hereinbefore set forth.

III. THIRD GROUND FOR WRIT

29. That on or about June 6, 1929, petitioner caused to be filed in the proper district land office of said Department of the Interior, located at Sacramento, California, an application (a copy of which is attached hereto, made a part hereof and marked "Exhibit C") for a permit to prospect for oil and gas upon certain land located in the State of California and within the territory of that District, setting forth (a) the name and address of your petitioner as the applicant therein; (b) proof by affidavit of your petitioner of his native-born citizenship in the United States of America and his residence in the State of California; (c) a statement that the applicant was not the holder of, and had no direct or indirect interest in or to, any subsisting permit to prospect for minerals on lands of the United States, and had no other application pend-

ing for such a permit, and that he had no interest, either direct or indirect in any other application for a permit, except for the parcels of land referred to in paragraphs 6 and 24 of this petition; (d) a proper description of the land for which the permit was desired; (e) a statement that to the best of petitioner's knowledge and belief the land applied for was not within any known geological structure of a producing oil or gas field; and (f) containing at least three references as to petitioner's reputation and business standing.

30. That said application complied in every respect with the terms of the aforesaid oil lands leasing act, and with all rules and regulations of the Department of the Interior lawfully prescribed thereunder.

31. That said application was filed in petitioner's own interest, and was not filed in the interest of any other person or persons, association or corporation.

32. That all of the statements set forth in said application were true at the time of the filing thereof, and were also true at all other times herein mentioned, and are now true.

33. That petitioner paid to respondents, by paying to said district land office, at the time of filing said application, the filing fee required by law.

34. That the land described in said application in respect of which the petitioner desired said prospecting permit, which land is the same as that in respect of which the petitioner in the third ground for writ in this proceeding desires that a permit issue to prospect for oil and gas, is as follows:

12 North ½, north ½ of the south ½ section 22; northeast ¼ section 14; southeast ¼ section 12; northwest ¼, west ½ of the east ½ section 18; southwest ¼ section 20; northwest ¼ of the northeast ¼, northwest ¼; north ½ of the southwest ¼, southwest ¼ of the southwest ¼ section 32, township 23 south, range 17 east, M. D. B. & M. All of section 14, township 23 south, range 16 east, M. D. B. & M., containing 2,240 acres more or less.

35. That said land described in paragraph 34 above is not covered by any prior existing claims, adverse to those of this petitioner, is not within the limits of a known geologic structure of a producing oil or gas field, and is subject in all respects to prospecting pursuant to the aforesaid oil lands leasing act.

36. That thereafter, on or about June 7, 1929, the register of said district land office, acting for the respondents herein, returned to petitioner his said application and filing fee, together with a letter of refusal to file said application, which said letter was in words and figures as follows, to wit:

UNITED STATES DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Sacramento, Calif., June 7, 1929.

H. H. SIMPSON,
463 I. W. Hellman Bldg., Los Angeles, Calif.

DEAR SIR: Reference is made to your application for oil and gas prospecting permit for portions of sections 12, 14, 18, 20, 22, and 32, T. 23 S., R. 17 E. and all of sec. 14, T. 23 S., R. 16 E., M. D. M.

You are advised that by order of March 20, 1929, the Secretary of the Interior directed as follows—

"Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929, and will reject all pending applications for permits."

13 Accordingly, your application and cashier's check for $28.00, which was received with the application, are returned herewith.

Yours very truly,

EDW. C. JENNINGS,
Acting Register.

M
2 incls.

37. That within the proper time, on or about June 14, 1929, petitioner filed an appeal in the local district land office of the Department of the Interior, at Sacramento, California, from the said action of the register in refusing to receive for filing petitioner's said oil and gas prospecting permit application. That said appeal was based upon the ground that there was no authority of law for the action taken by said register in refusing to accept said application. That the respondents, contrary to law and in abuse of any discretion which they may have under law, denied the appeal of petitioner, and have refused, and now refuse, to consider the same.

38. Petitioner realleges and reaffirms, with the same force and effect as though again set forth in full, all of the allegations contained in paragraphs 9, 10, 12, 13, 14, 15, 16, 17, and 18 of the first ground for writ hereinbefore set forth.

Wherefore, the premises considered, the petitioner prays:

1. That a rule may issue out of this court directing the respondents, and each of them, to appear before this honorable court and show cause, if there be any, why a writ of mandamus should not be issued commanding and directing the respondents—

(a) To revoke said order of March 20, 1929, in so far as said order forbids the register of the United States Land Office to receive

14 applications for prospecting permits tendered by this petitioner; to direct the receiver to receive petitioner's permit applications as of the dates when said applications were tendered, and to transmit said applications to the Commissioner of the General Land Office, and to direct that the said commissioner and the said Secretary of the Interior take up and act upon said applications in due course, in accordance with the aforesaid oil lands leasing act.

(b) To grant your petitioner's application for, and issue to him a permit, under and pursuant to the aforesaid oil lands leasing act, to prospect for oil and gas upon the land described in paragraph 6 of this petition.

(c) To grant your petitioner's application for, and issue to him a permit, under and pursuant to the aforesaid oil lands leasing act, to prospect for oil and gas upon the land described in paragraph 24 of this petition.

(d) To grant you petitioner's application for, and issue to him a permit, under and pursuant to the aforesaid oil lands leasing act, to prospect for oil and gas upon the land described in paragraph 34 of this petition.

2. That a writ of mandamus may issue to said respondents, and each of them, commanding and directing them and each of them—

(a) To revoke said order of March 20, 1929, in so far as said order forbids the register of the United States Land Office to receive applications for prospecting permits tendered by this petitioner; to direct the receiver to receive petitioner's permit
15 applications as of the dates when said applications were tendered, and to transmit said applications to the Commissioner of the General Land Office, and to direct that the said commissioner and the said Secretary of the Interior take up and act upon said applications in due course, in accordance with the aforesaid oil lands leasing act.

(b) To grant your petitioner's application for and issue to him a permit, under and pursuant to the aforesaid oil lands leasing act, to prospect for oil and gas upon the land described in paragraph 6 of this petition.

(c) To grant your petitioner's application for, and issue to him a permit, under and pursuant to the aforesaid oil lands leasing act, to prospect for oil and gas upon the land described in paragraph 24 of this petition.

(d) To grant your petitioner's application for, and issue to him a permit, under and pursuant to the aforesaid oil lands leasing act, to prospect for oil and gas upon the land described in paragraph 34 of this petition.

3. For such other and further relief as the nature of this petition may require.

(Sgd.) HOMER HENDRICKS,
(Sgd.) RAYMOND L. HAIGHT,
Attorneys for Petitioner.

16 DISTRICT OF COLUMBIA,
City of Washington, ss:

Homer Hendricks, being duly sworn, says that he is one of the attorneys for H. H. Simpson, the petitioner above named; that said petitioner is absent from the District of Columbia; that affiant has read the foregoing petition and knows the contents thereof and that he verily believes the matters and facts stated therein are true.

(Sgd.) HOMER HENDRICKS.

Subscribed and sworn to before me this 20th day of February, 1930.

[SEAL.] (Sgd.) FREDERICK G. UMHAU,
Notary Public.

My commission expires Nov. 15, 1930.

17 "*Exhibit A*"

APPLICATION FOR PROSPECTING PERMIT

OIL AND GAS

(Act of Congress approved Feb. 25, 1920)

UNITED STATES LAND OFFICE.

To the honorable Commissioner of the General Land Office, Washington, D. C.

H. H. Simpson, whose post-office address is 463 I. W. Hellman Building, Los Angeles, Cal., being first duly sworn upon oath,

deposes and says: That he is the applicant herein, and that his post-office address is as stated above; that he is a native-born citizen of the United States over the age of 21 years.

That he is not the holder of, and has no direct or indirect interest in, any other subsisting permit and has no other application pending for a permit, nor has he any interest either direct or indirect, in any other application for a permit except:

That this application is filed in his own interest and not in the interest of any other person, or persons, association or corporation.

That the description of the land for which this applicant for a prospecting permit applies for under the act of February 25, 1920 (Public 146), is as follows:

All of section 31, township 24 south, range 20 east, M. D. B. & M. consisting of 655.08 acres, more or less.

That the land above described is not included in any forest, military, naval, or Indian reservation.

That applicant believes that the above-described land offers a favorable field for prospecting for oil and gas for the reason that the report made by geologists to applicant indicate there is a possibility of finding oil and gas within the limits of same.

Affiant further states that to the best of his knowledge and belief the land applied for is not within any known geological structure of a producing oil or gas field.

That the applicant's proposed method of conducting exploratory operations is the construction of a camp to properly house employees, the building of roads, the erection of a standard rig, the installation of heavy drilling machinery, and the doing of all things necessary in drilling an oil and gas well.

18 Applicant further states that he has sufficient capital available for such operations, and if the permit to prospect is granted, applicant expects to proceed with the drilling in compliance with the requirements of the permit.

Applicant states that while he has had no personal experience in operations of this nature, he expects to employ experts in operating said work.

For reference to the applicant's reputation and business standing he respectfully refers to:

T. G. Kennedy, 314 South Olive St., Los Angeles, Cal.; Fred W. Armstrong, 7101 Cimarron St., Los Angeles, Cal.; John T. Kelley, 2705 Temple St., Los Angeles, Cal.

Wherefore, the applicant herein requests that such permit under said act do issue.

The address to which the applicant desires all notices sent is 463 I. W. Hellman Bldg., Los Angeles, Cal.

(Sgd.) H. H. SIMPSON.

Subscribed and sworn to before me this 25th day of May, A. D. 1929.

[SEAL.] (Sgd.) W. J. CROSBY,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 27, 1930.

19

"*Exhibit B*"

APPLICATION FOR PROSPECTING PERMIT, OIL AND GAS

(Act of Congress approved Feb. 25, 1920)

UNITED STATES LAND OFFICE.

To the Honorable Commissioner of the General Land Office, Washington, D. C.:

H. H. Simpson, whose post-office address is 463 I. W. Hellman Bldg., Los Angeles, Cal., being first duly sworn upon oath, deposes and says: That he is the applicant herein, and that his post-office address is as stated above; that he is a native-born citizen of the United States over the age of 21 years.

That he is not the holder of, and has no direct or indirect interest in, any other subsisting permit and has no other application pending for a permit, nor has he any interest, either direct or indirect, in any other application for a permit, except:

Section 31, T. 24 S., R. 20 E., M. D. B. & M.

That this application is filed in his own interest and not in the interest of any other person, or persons, association or corporation.

That the description of the land for which this applicant for a prospecting permit applies for under the act of February 25, 1920 (Public 146), is as follows:

Lots 9 and 10, section 30, east ½ of the southeast ¼ and northwest ¼ of the southeast ¼, section 19, township 27 south, range 19 east, M. D. M., consisting of 203.98 acres.

That the land above described is not included in any forest, military, naval, or Indian reservation.

That applicant believes that the above-described land offers a favorable field for prospecting for oil and gas for the reason that the reports made by geologists to applicant indicate there is a possibility of finding oil and gas within the limits of same.

Affiant further states that to the best of his knowledge and belief the land applied for is not within any known geological structure of a producing oil or gas field.

That the applicant's proposed method of conducting exploratory operations is the construction of a camp to properly house employees, the building of roads, the erection of a standard rig, the installation of heavy drilling machinery, and the doing of all things necessary in drilling an oil and gas well.

20 Applicant further states that he has sufficient capital available for such operations, and if the permit to prospect is granted, applicant expects to proceed with the drilling in compliance with the requirements of the permit.

Applicant states that while he has had no personal experience in operations of this nature, he expects to employ experts in operating said work.

For reference to the applicant's reputation and business standing he respectfully refers to:

T. H. Kennedy, 314 South Olive St., Los Angeles, Cal.

Fred W. Armstrong, 7101 Cimarron St., Los Angeles, Cal.

John T. Kelley, 2705 Temple St., Los Angeles, Cal.

Wherefore, the applicant herein requests that such permit under said act do issue.

The address to which the applicant desires all notices sent is 463 I. W. Hellman Bldg., Los Angeles, Cal.

(Sgd) H. H. SIMPSON.

Subscribed and sworn to before me this 25th day of May A. D. 1929.

[SEAL.] (Sgd) W. J. CROSBY,

Notary Public in and for the County of Los Angeles, State of California.

My commission expires April 27, 1930.

21 *"Exhibit C"*

APPLICATION FOR PROSPECTING PERMIT OIL AND GAS

(Act of Congress approved Feb. 25, 1920)

UNITED STATES LAND OFFICE.

To the honorable Commissioner of the General Land Office, Washington, D. C.

H. H. Simpson, whose post office address is 463 I. W. Hellman Bldg., Los Angeles, Cal., being first duly sworn upon oath, deposes and says: That he is the applicant herein, and that his post office address is as stated above; that he is a native born citizen of the United States over the age of 21 years.

That he is not the holder of, and has no direct or indirect interest in, any other subsisting permit and has no other application pending for a permit, nor has he any interest, either direct or indirect, in any other application for a permit, except: Pending permits covering parcels in sec. 19 & 30, T. 27 S., R. 19 E., M. D. M., & all of sec. 31, T. 24 S., R. 20 E., M. D. M.

That this application is filed in his own interest and not in the interest of any other person, or persons, association or corporation.

That the description of the land for which this applicant for a prospecting permit applies for under the act of February 25, 1920 (Public 146), is as follows:

North ½, north ½ of the south ½, section 22; northeast ¼, section 14; southeast ¼, section 12; northwest ¼, west ½ of the east ½, section 18; southwest ¼ section 20; northwest ¼ of the northeast ¼, northwest ¼; north ½ of the southwest ¼, southwest ¼ of the southwest ¼, Section 32, Township 23 south, range 17 east, M. D. B. & M. All of section 14, Township 23 south, range 16 east, M. D. B. & M., containing 2,240 acres, more or less.

That the land above described is not included in any forest, military, naval, or Indian reservation.

That applicant believes that the above-described land offers a favorable field for prospecting for oil and gas for the reason that the reports made by geologists to applicant indicate there is a possibility of finding oil and gas within the limits of same.

Affiant further states that to the best of his knowledge and belief the land applied for is not within and known geological structure of a producing oil or gas field.

That the applicant's proposed method of conducting explor-
22 atory operations is the construction of a camp to properly house employees, the building of roads, the erection of a standard rig, the installation of heavy drilling machinery, and the doing of all things necessary in drilling an oil and gas well.

Applicant further states that he has sufficient capital available for such operations, and if the permit to prospect is granted, applicant expects to proceed with the drilling in compliance with the requirements of the permit.

Applicant states that while he has had no personal experience in operations of this nature, he expects to employ experts in operating said work.

For reference to the applicant's reputation and business standing he respectfully refers to:

John T. Kelley, 2705 Temple St., Los Angeles, Cal.
F. W. Armstrong, 463 I. W. Hellman Bldg., Los Angeles, Cal.
A. E. Perris, 602 Pantages Theatre Bldg., Los Angeles, Cal.

Wherefore, the applicant herein requests that such permit under said act do issue.

The address to which the applicant desires all notices sent is 463 I. W. Hellman Bldg., Los Angeles, Cal.

(Signed) H. H. SIMPSON.

Subscribed and sworn to before me this 6th day of June A. D., 1929.

[SEAL.] (Signed) F. B. DICKEY,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires Oct. 1, 1932.

23 In the Supreme Court of the District of Columbia

UNITED STATES OF AMERICA EX REL. H. H. Simpson, 463 I. W. Hellman Building, Los Angeles, California, petitioner v. RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, and Charles C. Moore, Commissioner of the General Land Office, respondents	At law No. 77788.

Answer and response to the rule

Filed Mar. 1, 1930

Come now Ray Lyman Wilbur, Secretary of the Interior, and Charles C. Moore, Commissioner of the General Land Office, and each in response to the rule to show cause and for their separate answer to the allegations of the petition say that for the purposes of this suit they admit all of the statements or allegations made by the petitioner preliminary to the numbered allegations of their petition, and for answer to such numbered allegations, and in response to the rule to show cause, say:

1. They admit the allegations of paragraph 1.

2. For the purposes of this suit only they admit the allegations of paragraph 2.

3. For the purposes of this suit only they admit the allegations of paragraph 3.

4. The respondents say for answer to paragraph four that neither of them made any special examination of the facts set forth in petitioner's application and hence are unable to either affirm or deny the existence or nonexistence of the facts as set forth therein. For the purpose of joining issue thereon, they deny each and every allegation of said paragraph.

24 5. Respondents admit that petitioner tendered to the district land office the filing fee required by law, but state that such filing fee was returned to the petitioner and was not accepted by them or any of their subordinates.

6. They admit the allegations of paragraph 6.

7. In answer to paragraph 7, the respondents state that inasmuch as they made no separate examination of the facts relative to the condition of the lands described in petitioner's application, or relative to the status of the petitioner, they are unable to either affirm or deny the allegations of paragraph 7, but for the purposes of this suit only they deny such allegations.

8. They admit the allegations of paragraph 8.

9. Respondents state that inasmuch as they made no separate examination of the facts relative to the status of the petitioner as set forth in paragraph 9, the respondents are unable either to affirm or deny the allegations thereof. However, for the purposes of this suit only they admit said allegations.

10. Respondents admit the allegations of paragraph 10.

11. Answering the allegations of paragraph 11, respondents deny that the action of the Secretary of the Interior, in connection with the application of petitioner, was contrary to law and in abuse of his discretion as such official. They admit all other allegations of said paragraph.

12. They deny each and every allegation in paragraph 12.

13. The respondents deny that the petitioner is entitled to a permit to prospect the lands described in his application for oil and gas. They state that all of the allegations of section 13 are argumentative and constitute conclusions of law on the part of the pleader, which respondents are advised and understand they are under no obligations either to affirm or deny.

25 14. They deny the allegations of paragraph 14.

15. They deny the allegations of paragraph 15.

16. They deny the allegations of paragraph 16, and allege that the court has no jurisdiction in the premises to award to petitioners the relief sought, the administration thereof having been reposed by law in the Secretary of the Interior, whose action is final and conclusive.

17. Respondents admit that no published decisions of the United States courts exist which involve the question raised by this petition, if any is raised. They deny all other allegations of said paragraph.

18. The respondents admit that a speedy and final decision in this case is desirable, both to petitioner and to respondents.

ANSWER AND RESPONSE TO SECOND GROUND

19. The respondents admit the allegations of paragraph 19.

20. They admit the allegations of paragraph 20.

21. So far as their knowledge goes, they admit the allegations of paragraph 21.

22. In view of the fact that no particular examination was made by respondents as to the separate statements set forth in said application, they are unable to state as a matter of official knowledge whether or not such statements were true at the time of filing thereof, and all other times mentioned therein, or are now true.

23. Respondents admit that petitioner tendered to the district land office the filing fee required by law, but state that such filing fee was returned to the petitioner and was not accepted by them or any of their subordinates.

24. They admit the allegations of paragraph 24.

25. In answer to paragraph 25, the respondents state that inasmuch as they made no separate examination of the facts relative to the condition of the lands described in petitioner's applica-
26. tion, or relative to the status of the petitioner, they are unable to either affirm or deny the allegations of paragraph 25, but for the purposes of this suit only they deny such allegations.

26. They admit the allegations of paragraph 26.

27. Answering the allegations of paragraph 27, respondents deny that, in denying the appeal of the petitioner and in refusing to consider the same, such action was contrary to law and in the abuse of any official discretion vested in them under the law. All other allegations thereof they admit.

28. Respondents state that no answer seems necessary to the allegations of paragraph 28. They have separately answered each of the paragraphs enumerated therein and in answer to said paragraph 28, if any answer is required from them, they reallege, reaffirm, and restate with the same force and effect as though again set forth in full all of the allegations contained in each of said enumerated paragraphs, to wit, 9, 10, 12, 13, 14, 15, 16, 17, and 18, in answer to the first ground for writ hereinbefore set forth.

ANSWER AND RESPONSE TO THIRD GROUND

29. The respondents admit the allegations of paragraph 29.

30. For the purposes of this suit only they admit the allegations of paragraph 30.

31. For the purposes of this suit only they admit the allegations of paragraph 31.

32. The respondents say for answer to paragraph 32 that neither of them made any special examination of the facts set forth in petitioner's application and hence are unable to either affirm or deny the existence or nonexistence of the facts as set forth therein. For the purpose of adjoining issue thereon, they deny each and every allegation of said paragraph.

27 33. Respondents admit that petitioner tendered to the district land office the filing fee required by law, but state that

such filing fee was returned to the petitioner and was not accepted by them or any of their subordinates,

34. They admit the allegations of paragraph 34.

35. In answer to paragraph 35, the respondents state that inasmuch as they made no separate examination of the facts relative to the condition of the lands described in petitioner's application, or relative to the status of the petitioner, they are unable to either affirm or deny the allegations of paragraph 35, but for the purposes of this suit only they deny such allegations.

36. They admit the allegation of paragraph 36.

37. Answering the allegations of paragraph 37, respondents deny that the action of the Secretary of the Interior, in connection with the application of petitioner, was contrary to law and in abuse of his discretion as such official. They admit all other allegations of said paragraph.

38. Respondents state that no answer seems necessary to the allegations of paragraph 38. They have separately answered each of the paragraphs enumerated therein and in answer to said paragraph 38, if any answer is required from them, they reallege, reaffirm, and restate with the same force and effect as though again set forth in full all of the allegations contained in each of said enumerated paragraphs, to wit, 9, 10, 12, 13, 14, 15, 16, 17, and 18, in answer to the first ground for writ hereinbefore set forth.

39. Further answering all of the allegations of said petition, including the allegations of the first, second, and third grounds thereof, respondents allege that the administration of the act of February 25, 1920 (41 Stat. 437, section 32), is reposed in the
28 Secretary of the Interior, with whose authority, reasonably exercised, the courts may not interfere unless the Secretary fails, refuses, or neglects to perform a mandatory, ministerial duty imposed by the terms of the act.

40. Further answering all of the allegations of said petition, including the allegations of the first, second and third grounds thereof respondents allege that the language of section 13 of the act is permissive, not mandatory, and has been so construed and acted upon by the Secretary of the Interior during the nine years intervening since the date of its passage. Its context plainly reposes in the Secretary of the Interior the discretion either to issue or decline to issue prospecting permits. Neither section 13 nor any other section, nor any rule or regulation promulgated in the administration of the act, vests any right in an applicant for a permit, to receive the same. On the contrary, section 2 of the regulations issued March 11, 1920, by the Secretary of the Interior under said act of February 25, 1920, reprinted and reissued by the Secretary of the Interior October 29, 1920, in force at date of petitioner's application, and still in force, expressly provides:

It should be understood that under the act, the granting of a prospecting permit for oil and gas is discretionary with the Secretary of the Interior, and any application may be granted or denied, either in part or in its entirety as the facts may be deemed to warrant.

The securing of a permit or license to prospect public lands for oil and gas is a privilege and not a right. Petitioner does not allege

that he had performed any work or expended any money or other thing of value in, upon or for the development of the land described in the application, nor that he had surrendered to the United States any claim, right or interest in this or other lands of the United States which would constitute a legal or equitable claim or right to receive a permit; neither does he disclose that any right, of whatsoever nature, has been acquired by him to receive a permit, but he
29 simply sets forth a state of facts which indicate that he is qualified as an applicant and has thus placed himself in a position to apply for and receive a permit if and when issued by the Secretary of the Interior. Further than that, he shows no acquired status involving fixed or vested rights to enter public land of the United States.

41. Further answering all of the allegations of said petition, including the allegations of the first, second and third grounds thereof respondents allege that the informal proclamation by the President of the United States, through the press, on March 12, 1929, referred to in the petition that "there will be complete conservation of Government oil in this administration" was the public announcement of the definite policy of the administration to assist in maintaining, or restoring, the equilibrium of the oil markets of the country. Thereupon the Secretary of the Interior, as appears by the petition, took immediate steps to put such policy into actual operation. The effect of his Orders Nos. 337, dated March 16, 1929, and 338, dated March 20, 1929, copies of which are attached hereto and made a part hereof, was to cause all public lands containing oil to be temporarily withdrawn from all exploration for oil and gas under the act of February 25, 1920, and thus for such period as may be required, in the discretion of the President, prevent Government-owned oil from entering the market in competition with privately owned oil. The acts of the Secretary of the Interior in effectuating the aforesaid policy of the President, of which complaint is made by the petitioner, are in direct response to the presidential request. Such acts and orders were done and issued in the valid exercise of his general supervision over the public lands of the United States, and are as much within the purview of his official duty as if made the specific subject of a formal request in writing directed to him under the presidential signature and seal. Such action is wholly execu-
30 tive in character, results from the due exercise of executive judgment and discretion, is the act of the President, both in law and fact under these circumstances, and the courts are without power to review, reverse, modify, or otherwise interfere therewith. The petition therefore states no ground upon which the court will be justified in issuing the writ sought.

Wherefore, respondents, and each of them, pray that the rule be discharged as to each of them, the petition dismissed as to each of them, and that petitioner take nothing herein; that respondents and each of them be permitted to go hence without day, with their costs.

RAY LYMAN WILBUR,
Secretary of the Interior.
C. C. MOORE,
Commissioner of the General Land Office.

31 DISTRICT OF COLUMBIA, *ss:*

Ray Lyman Wilbur, being first duly sworn, on his oath says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the matters therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

RAY LYMAN WILBUR.

Subscribed and sworn to before me this 28th day of February, 1930.

[NOTARIAL SEAL.] W. BERTRAND ACKER,
Notary Public in and for the District of Columbia.

DISTRICT OF COLUMBIA, *ss:*

Charles C. Moore, being first duly sworn, on his oath says that he has read the foregoing answer by him subscribed, and that he knows the contents thereof, and that the matters therein stated of his own knowledge are true, and those stated upon information and belief he believes to be true.

CHARLES C. MOORE.

Subscribed and sworn to before me this 27th day of February, 1930.

[NOTARIAL SEAL.] HERMAN C. GAUSS,
Notary Public in and for the District of Columbia.
Commission expires May 18, 1933.

E. C. FINNEY,
Solicitor, Department of the Interior,
O. H. GRAVES,
Assistant to the Solicitor,
Attorneys for Respondents.

32 UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington, March 16, 1929.

ORDER NO. 337.

The Federal oil conservation policy announced by President Hoover will be energetically executed by the Interior Department.

There are more than 5,000 applications for oil and gas permits on public lands pending in the General Land Office in Washington and an unknown number in the field offices. Steps were taken several days ago toward the rejection of all such applications, and registers of local land offices have been instructed not to receive new applications.

Probably in none of the cases on hand has the applicant expended money for developmental purposes, although he may have gone to some expense in opposing conflicting claims or furnishing additional evidence in support of his application.

Where land covered by pending applications is likely to be drained by adjoining wells on privately-owned lands, the question of granting permits on Government land will be considered in the light of facts developed by departmental investigation.

With regard to the 20,000 outstanding permits on public lands, the Department will deal fairly with holders who have been diligent in maintaining their equities. Where actual drilling operations have been started and are being continued, opportunity will be

given to carry on developmental work to finally determine the character of the land. Immediate steps will be taken, however, to cancel all such permits where no drilling has been done or money spent in development.

To determine the facts in connection with existing oil and gas permits, I have named a committee consisting of the Commissioner of the General Land Office, the Director of the Geological Survey, and the solicitor of the department. They will consider the extent of operations which have been prosecuted under outstanding permits to determine whether permittees have acquired equities which should be recognized and to make appropriate recommendations.

Where permits are now in good standing, either because of recent issue or previous extension of time, no action will be taken during the remaining period covered by the permit. When that time has expired, however, and the permittee has failed to comply with the terms of his permit, he will be called upon immediately to show cause why the permit should not be canceled. This includes so-called group developments heretofore approved and in which extensions have been allowed, where permittees are engaged in a joint drilling program, test wells being drilled by a responsible drilling company on some of the public lands in the area covered by the permits. So long as this program is being diligently prosecuted, no adverse action will be taken.

No leases will be issued for oil and gas production unless required by mandate of law, such as discovery under existing permits, as provided by the mineral leasing act, or through the advertisement of a minimum of 25,000 acres of Osage Indian lands annually, as directed by the act of Congress approved March 2, 1929.

(Signed) RAY LYMAN WILBUR,
Secretary.

UNITED STATES DEPARTMENT OF THE INTERIOR,
Washington, March 20, 1929.

ORDER No. 338.

The following outlines the general procedure in the Department of the Interior for executing the President's public land oil conservation policy:

1. All oil and gas applications and permits pending in the office of the First Assistant Secretary of the Interior, under the general leasing act, will be returned to the General Land Office.

2. All oil and gas cases pending in the office of the solicitor will be reviewed to determine their present status. Those coming within the new policy should be returned to the General Land Office.

3. The preparation of letters in the General Land Office calling upon delinquent permittees to show cause why their permits should not be canceled will be expedited.

4. Oil and gas permits now in good standing will not be proceeded against so long as the terms of the permits are being timely complied with.

5. Where a permittee is entitled to a lease because of discovery, it is mandatory to lease only one-fourth of the area; under strict interpretation of the President's oil policy, except that when the permit covers 160 acres or less, the permittee would be entitled to

lease the full acreage. The remainder will not be leased unless such action is required in the public interest.

6. The departmental committee, consisting of the Solicitor, the Commissioner of the General Land Office, and the Director of the Geological Survey, will consider the extent of operations which have been prosecuted under existing oil and gas permits, to determine whether permittees have acquired equities which should be recognized and make appropriate recommendations to the Secretary. In reviewing permits, representative cases may be recommended for public hearing before the Secretary of the Interior to determine lines of policy.

7. Registers of local land offices will not receive applications for oil and gas permits after March 12, 1929, and will reject all pending applications for permits. They will forward to the General Land Office all applications for extensions of time, etc., relative to outstanding permits.

8. Applications for extension of permits on hand should be disposed of promptly. Those not involving expenditure of money in development work will be denied by the General Land Office. All other cases will be referred to the special committee by memoranda of the General Land Office showing the facts disclosed by the record, and of the Geological Survey as to the status of development work.

35 9. The General Land Office will hold for cancellation, allowing 15 days in which to show cause, all permits on which there is no prima facie evidence that expenditure of money in development work has been made. All other cases should be referred to the special committee by memoranda of the General Land Office showing the facts disclosed by the record and of the Geological Survey as to status of development work.

10. All oil and gas permits in the Geological Survey pending report to the General Land Office will be promptly considered under the new policy. Where these cases involve conflict of agricultural and mineral rights, or questions of similar character, they should be completed by the Geological Survey. All others should be returned to the General Land Office with appropriate report when such is required under the new policy; otherwise without report.

11. Supervisors of oil and gas operations in the Geological Survey must deny approval to notices of intention to drill on permits that are not shown to be in good standing by the terms of the permit itself or an approved extension of time.

12. The Geological Survey will report to the Secretary on the likelihood of oil and gas drainage of Government lands in various producing wildcatting fields where a claim of drainage is made. The special committee will consider the question of drainage only when incidentally involved in individual permits before it for consideration.

13. Permits issued and outstanding in Executive Order Indian Reservations under the act of March 3, 1927, will be considered and disposed of in the same manner as provided in the foregoing paragraphs.

RAY LYMAN WILBUR,
Secretary of the Interior.

36 *Demurrer*

Filed Mar. 7, 1930

* * * * * * *

Comes now the petitioner, by his undersigned attorneys, in the above entitled and numbered cause, and says that the respondent's answer and response to the rule is bad in substance.

The matters of law intended to be argued on the hearing of this demurrer are as follows:

1. The act of February 25, 1920 (41 Stat. 437, ch. 85) relied upon by respondents does not vest said respondents with judgment and discretion to refuse to consider upon their merits applications of your petitioner for permits to prospect for oil and gas upon the lands described in said applications.

2. The certain orders, instructions, public announcements and other expressions by the president and these respondents, referred to in the answer, do not constitute, in law or in fact, withdrawals of the lands, described in petitioner's permit applications from the open and unappropriated public domain, or render them not subject to disposal under the act of February 25, 1920. (41 Stat. 437, ch. 85.)

3. The authority of the president to make withdrawals of public lands is granted and limited by the Act of Congress, approved June 25, 1910 (36 Stat. 847, ch. 421), and proceedings which do not conform to this statute are not in law, or in fact, withdrawals.

37 4. Neither the President nor these respondents possess any power to deal with the public lands under a policy formulated by them, but must execute the policies expressed by the Congress with respect thereto.

5. The President and respondents have no authority inherent in their offices, or under any statute to withhold public lands from disposal as part of a program designed to benefit the oil industry, which is private business, and the orders issued which have such effect are ultra vires and void.

6. Other matters of law, apparent upon the face of the pleadings.

HOMER HENDRICKS,
DONALD V. HUNTER,
Both of Miller & Chevalier,
RAYMOND L. HAIGHT,
Of Haight, Mathes & Shepard,
Attorneys for Petitioner.

38 *Memorandum opinion*

Filed Apr. 10, 1930

* * * * * * *

Upon the grounds stated in my memorandum opinion filed April 8th, 1930, in the case of U. S. ex rel. Vedder, the demurrer to the answer will be sustained.

BAILEY, *J.*

Supreme Court of the District of Columbia

Wednesday, April 16th, 1930

Session resumed pursuant to adjournment, Hon. Jennings Bailey, justice, presiding.

* * * * * * *

This cause came on heretofore to be heard upon the petition filed, the rule to show cause issued, the answer of respondents and the demurrer filed herein to said answer and after argument by attorneys of record for the respective parties was submitted to the court. Thereupon, the same being considered, it is ordered that the demurrer be, and the same is hereby, sustained.

The respondents by their said attorneys elect to stand upon their answer and it is ordered that judgment be now entered.

Wherefore, it is adjudged and ordered that a writ of mandamus do forthwith issue in this cause to the Secretary of the Interior, requiring him to accept for filing the applications of the peti-
39 tioner H. H. Simpson, specified in this cause, directing him to proceed therewith according to law.

Further, it is considered that petitioner recover of respondents his costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment the respondents by their said attorneys, in open court, note an appeal to the Court of Appeals of the District of Columbia.

40 In the Supreme Court of the District of Columbia

UNITED STATES OF AMERICA, EX RELATIONE, H. H. Simpson, petitioner v. RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, and Charles C. Moore, Commissioner of the General Land Office, respondents	At law No. 77788

Assignment of errors

Filed Apr. 19, 1930

* * * * * * *

The respondents present their assignment of errors as follows:

1. The court erred in sustaining the demurrer to the answer.

2. The court erred in finding for the petitioner and against the respondents and in granting the writ of mandamus herein.

3. The court erred in holding that the acts of the President of the United States and of the Secretary of the Interior in the premises, together, or separately, do not constitute a temporary executive withdrawal of the public lands subject to prospecting for oil and gas under the provisions of the act of February 25, 1920, commonly called the oil leasing act, from the purposes of said act.

4. The court erred in holding that the oil leasing act does not repose in the Secretary of the Interior a discretion broad enough to

permit him, in the exercise of his official judgment, to refuse to issue permits to any applicant.

401½ 5. The court erred in holding that the oil leasing act does not repose in the Secretary of the Interior a discretion broad enough to permit him, in the exercise of his official judgment, to refuse to issue permits to any applicant in the absence of specific rules and regulations.

6. The court erred in holding that the provisions of the last subdivision of rule 2 of the rules and regulations do not vest in the Secretary of the Interior discretion to refuse to grant any permit in the due exercise of his official duty.

O. H. GRAVES,
Attorney for Respondents.

41 In the Supreme Court of the District of Columbia

UNITED STATES OF AMERICA EX RELATIONE H. H. Simpson, petitioner v. RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR, and Charles C. Moore, Commissioner of the General Land Office, respondents	At law No. 77788

Designation of record

Filed Apr. 19, 1930

* * * * * * *

The clerk, in making up the transcript of record on appeal in the above-entitled cause, will include:

1. Petition and exhibits.
2. Answer and exhibits.
3. Demurrer to answer.
4. Order sustaining the demurrer and judgment of the court.
5. Notation and allowing of appeal.
6. Assignment of errors.
7. This designation.

O. H. GRAVES,
Attorney for Respondents.

Service acknowledged this 14th day of April, 1930.
HOMER HENDRICKS,
Attorney for Petitioner.

42 Supreme Court of the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 41, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No, 77788 at Law,

wherein United States of America, *ex rel* H. H. Simpson is petitioner and Ray Lyman Wilbur, Secretary of the Interior and Charles C. Moore, Commissioner of the General Land Office, are respondents, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 21st day of June, 1930.

[SEAL.] FRANK E. CUNNINGHAM, *Clerk.*

(Indorsement on cover:) District of Columbia Supreme Court. No. 5251. Ray Lyman Wilbur, Secretary &c., et al., appellants, vs. United States of America, ex rel., H. H. Simpson. Court of Appeals, District of Columbia. Filed June 24, 1930. Henry W. Hodges, clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1930

Tuesday, October 14th, A. D. 1930.

* * * * * * *

No. 5241

RAY LYMAN WILBUR, Secretary of the Department of the Interior, Appellant,

vs.

UNITED STATES OF AMERICA ex Relatione ROY G. BARTON

No. 5247

RAY LYMAN WILBUR, Secretary of the Interior Department, Appellant,

vs.

THE UNITED STATES of AMERICA ex Relatione ETHEL McLENNAN

No. 5250

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office, Appellants,

vs.

W. B. PYRON

and No. 5251

RAY LYMAN WILBUR, Secretary of the Interior, and CHARLES C. Moore, Commissioner of the General Land Office, Appellants,

vs.

UNITED STATES of AMERICA ex Rel. H. H. SIMPSON

On motion, William O. Wilson, Esq., is allowed to file brief and take part in oral argument in No. 5247, as amicus curiæ, on behalf of the State of Wyoming.

On motion, P. Q. Nyce, Esq., is allowed to file brief and take part in oral argument in No. 5247, as amicus curiæ, on behalf of Utah, New Mexico and Montana.

The argument in the above entitled cause was commenced by Mr. O. H. Graves, attorney for the appellants, and was continued by Mr. E. C. Finney, attorney for the appellants.

Wednesday, October 15th, A. D. 1930.

* * * * * * *

No. 5241

RAY LYMAN WILBUR, Secretary of the Department of the Interior, Appellant,

vs.

UNITED STATES OF AMERICA ex Relatione ROY G. BARTON

No. 5247

RAY LYMAN WILBUR, Secretary of the Interior Department, Appellant,

vs.

THE UNITED STATES of AMERICA ex Relatione ETHEL McLENNAN

No. 5250

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office, Appellants,

vs.

W. B. PYRON

and No. 5251

RAY LYMAN WILBUR, Secretary of the Interior, and CHARLES C. Moore, Commissioner of the General Land Office, Appellants,

vs.

UNITED STATES of AMERICA ex Rel. H. H. SIMPSON

The argument in the above entitled causes was continued by Mr. James Conlon, attorney for the appellant in No.

5241, and by Mr. Lewis E. Hoffman, attorney for the appellant in No. 5247, and by Mr. James G. Leovy, attorney for the appellant in No. 5250, and by William O. Wilson, Esq., Attorney General of the State of Wyoming, as amicus curiæ, and by Mr. Peter Q. Nyce, as amicus curiæ, on behalf of New Mexico, Utah and Montana, and by Mr. Chester I. Long, as amicus curiæ, on behalf of the State of Colorado, and was concluded by Mr. E. C. Finney, attorney for the appellants.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5247

RAY LYMAN WILBUR, Secretary of the Interior, Appellant,

v.

THE UNITED STATES OF AMERICA ex Relatione ETHEL McLENNAN

and No. 5250

RAY LYMAN WILBUR, Secretary of the Interior, and C. C. Moore, Commissioner of the General Land Office, Appellants,

v.

W. B. PYRON

and No. 5251

RAY LYMAN WILBUR, Secretary of the Interior, and Charles C. Moore, Commissioner of the General Land Office, Appellants,

v.

UNITED STATES OF AMERICA ex Rel. H. H. SIMPSON

(Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices)

These cases were argued and presented with No. 5241, Wilbur v. Barton, just decided, and the decision in that case is controlling here.

The judgment in each case will be reversed, and the cause remanded.

Reversed.

Chas. H. Robb, Associate Justice.

For reasons stated in his dissenting opinion in No. 5241, Wilbur v. Barton, Mr. Justice Van Orsdel dissents.

Endorsed: Nos. 5247, 5250, 5251. Ray Lyman Wilbur, Secretary of the Interior, Appellant, v. United States of America ex relatione Ethel M. McLennan; Ray Lyman Wilbur, Secretary of the Interior, et al., Appellants, v. W. B. Pyron; Ray Lyman Wilbur, Secretary of the Interior, et al., Appellants, v. United States of America ex rel. H. H. Simpson. Opinion of the Court per Mr. Justice Robb. Court of Appeals. District of Columbia. Filed December 1, 1930. Henry W. Hodges, Clerk.

Monday, December 1st, A. D. 1930.

* * * * * * *

No. 5251, October Term, 1930

RAY LYMAN WILBUR, Secretary of the Interior, and Charles C. Moore, Commissioner of the General Land Office, Appellants,

vs.

UNITED STATES OF AMERICA ex Rel. H. H. SIMPSON

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby reversed; and that this cause be and the same is hereby remanded to the said Supreme Court

for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice Robb, December 1, 1930.

Mr. Justice Van Orsdel dissenting.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5241

RAY LYMAN WILBUR, Secretary of the Interior, Appellant,

v.

UNITED STATES OF AMERICA ex Rel. ROY G. BARTON

Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices)

Appeal from a judgment in the Supreme Court of the District directing the issuance of a writ of mandamus to compel the Secretary of the Interior "to reinstate the application of the petitioner, Roy G. Barton, * * * and to proceed thereon according to law."

Should the judgment be affirmed, it probably would result in the reinstatement of "more than 5,000 applications for oil and gas permits on public lands pending in the General Land Office in Washington and an unknown number in the field offices."

The cause was heard on petition and answer. There is no dispute as to the facts, which are substantially as follows: On June 6, 1928, Barton filed an application in the Land Office at Las Cruces, New Mexico, for a permit to prospect for oil and gas in a certain described tract of public land of the United States (Act of February 25, 1920; 41 Stat. 437).

On March 13, 1929, the Department of the Interior released a "Memorandum for the Press", reading in part as follows: "Secretary Wilbur, of the Department of the Interior, today asked the Commissioner of the General Land Office to send instructions to all local land offices to the effect that they are not to receive further applications for permits to prospect for oil and gas on the public

domain, and to reject all applications now pending. These instructions are in accordance with the statement issued at the White House yesterday to the effect that 'there will be a complete conservation of Government oil in this administration.'"

On the same day a telegram was forwarded by the Department to the various United States land offices, including the land office at Las Cruces, New Mexico, reading in part as follows: "No oil and gas prospecting permits will be issued on and after March 12, 1929. Reject all applications for oil and gas permits now pending in your office and receive no more. All orders for drawings hereby revoked."

On March 16, 1929, Departmental Order No. 337 was issued, reading in part as follows: "The Federal oil conservation policy announced by President Hoover will be energetically executed by the Interior Department. There are more than 5,000 applications for oil and gas permits on public lands pending in the General Land Office in Washington and an unknown number in the field offices. Steps were taken several days ago toward the rejection of all such applications, and registers of local land offices have been instructed not to receive new applications. Probably in none of the cases on hand has the applicant expended money for development purposes, although he may have gone to some expense in opposing conflicting claims or furnishing additional evidence in support of his application. * * * To determine the facts in connection with existing oil and gas permits, I have named a committee consisting of the Commissioner of the General Land Office, the Director of the Geological Survey, and the solicitor of the department. They will consider the extent of operations which have been prosecuted under outstanding permits to determine whether permittees have acquired equities which should be recognized and to make appropriate recommendations. Where permits are now in good standing, either because of recent issue or previous extension of time, no action will be taken during the remaining period covered by the permit. When that time has expired, however, and the permittee has failed to comply with the terms of his permit, he will be called upon immediately to show cause why the permit should not be canceled. * * * No leases will be issued for oil and gas production unless required by mandate of law, such as

discovery under existing permits, as provided by the mineral leasing act, or through the advertisement of a minimum of 25,000 acres of Osage Indian lands annually, as directed by the act of Congress approved March 2, 1929." This Order also was incorporated in a "Memorandum for the Press" issued by the Department on the same day.

On March 26, 1929, the Commissioner of the General Land Office, "pursuant to instructions approved by the Secretary of the Interior March 13, 1929, and in accordance with the policy announced in Departmental Order No. 337 of March 16, 1929, rejected" Barton's application. An appeal was taken, and the order of rejection was sustained by the Department in a decision dated September 4, 1929.

In his petition Barton avers "that there is nothing in or under the provisions of the act of February 25, 1920 (41 Stat. 437), * * * which requires your relator to make any substantial expenditures for reliable geological surveys upon the lands embraced in his oil and gas application * * * in order to entitle him to a permit for the lands described in said application;" and that "the Secretary of the Interior is without authority of law to reject his application upon any ground, and especially upon the ground alleged that no applications for permits will be allowed after March 12, 1929, because of the adoption of a new policy as set out in said press notices of March 13, 1929, hereinabove quoted, and March 16, 1929, also identified as Departmental Order No. 337."

The answer admits, for the purposes of this suit, that Barton "was duly qualified under the law to receive the permit for which he applied; that at all times relator (Barton) was and is now ready, able, and willing to comply with all regulations made pursuant to the said act of Congress respecting the duties and obligations of permittee."

Did the orders of the Secretary of the Interior amount to a temporary withdrawal of the public land from location, entry, and exploration for the purpose of discovering oil or gas; and, assuming the withdrawal, did the mere filing of an application for a prospecting permit initiate a right in the applicant that could not be affected by the withdrawal?

The Act of June 25, 1910 (36 Stat. 847), "to authorize the President of the United States to make withdrawals of public lands in certain cases," reads in parts as follows: "Be it enacted * * *, That the President may at any

time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

Prior to 1910 the President had acted in scores of cases without express statutory authority, and in United States v. Midwest Oil Co., 236 U. S. 459, his authority to make such withdrawals was expressly sustained.

There can be no doubt that the effect of the orders issued by the Secretary was to withdraw from further location, entry, and exploration for the discovery of oil and gas all public land, and that the purpose of such withdrawal was to meet conditions due to great overproduction and to conserve oil and gas in the public interest. That such was the intent of the Secretary and the understanding of the public is equally plain. It is immaterial that the orders were not limited as to time, for the Act of 1910 provides that such withdrawals or reservations shall remain in force until revoked by the President or by an Act of Congress.

The next question to be determined is whether the withdrawal of the Secretary was the withdrawal of the President. It is settled law that "the President speaks and acts through the heads of the several departments in relation to subjects which appertain to their respective duties" (Wilcox v. Jackson, 13 Pet. 498), and that "the acts of the heads of departments, within the scope of their powers, are in law the acts of the President" (Wolsey v. Chapman, 101 U. S. 755, 769). In the case last mentioned it was held that the order of the Secretary of the Interior, directing that the lands on the Des Moines River above the Racoon Fork be reserved from sale, was in contemplation of law the order of the President and had the same effect as the proclamation mentioned in the Act of September 4, 1841 (5 Stat. 453). The Court said: "A proclamation by the President, reserving lands from sale, is his official public announcement of an order to that effect. No particular form of such an announcement is necessary. It is sufficient if it has such publicity as accomplishes the end to be attained. If the President himself had signed the order in

this case, and sent it to the registers and receivers who were to act under it, as notice to them of what they were to do in respect to the sales of the public lands, we can not doubt that the lands would have been reserved by proclamation within the meaning of the statute. Such being the case, it follows necessarily from the decision in Wilcox v. Jackson that such an order sent out from the appropriate executive department in the regular course of business is the legal equivalent of the President's own order to the same effect. It was, therefore, as we think, such a proclamation by the President reserving the lands from sale as was contemplated by the act." See also United States v. Morrison, 240 U. S. 192; Northern Pacific Railway Co. v. Wismer, 246 U. S. 283; Relation of the President to the Executive Departments, 7 Op. Atty. Gen. 453.

In the present case the orders of the Secretary gave effect to the previously announced policy of the President, were acquiesced in by him, and were in legal contemplation his acts. Was the President vested with such authority?

It is not contended that the Act of June 25, 1910 (36 Stat. 847), expressly authorizing the President to make temporary withdrawal "from settlement, location, sale, or entry any of the public lands of the United States," has been repealed. The contention is that the Act of February 25, 1920 (41 Stat. 437), "to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," and providing that public lands containing deposits of such minerals "shall be subject to disposition in the form and manner provided by this Act," was mandatory, and that the President was without power to withdraw such lands from disposition as provided in the Act. Sec. 13 of that Act, relating to oil and gas, provides in part "that the Secretary of the Interior is hereby authorized, under such necessary and proper rules and regulations as he may prescribe, to grant to any applicant qualified under this Act a prospecting permit, which shall give the exclusive right, for a period not exceeding two years, to prospect for oil or gas upon not to exceed two thousand five hundred and sixty acres of land * * *. Whether the lands sought in any such application and permit are surveyed or unsurveyed the applicant shall, prior to filing his application for permit, locate such lands in a reasonably compact form and according to

the legal subdivisions of the public land surveys if the land be surveyed * * *."

Sec. 14 provides in part that "upon establishing to the satisfaction of the Secretary of the Interior that valuable deposits of oil or gas have been discovered within the limits of the land embraced in any permit, the permittee shall be entitled to a lease for one-fourth of the land embraced in the prospecting permit: * * *."

There is no provision in the Act purporting to repeal or modify the Act of 1910, and in our view such a modification may not be implied. The provision in the first section that the lands containing certain named mineral deposits "shall be subject to disposition in the form and manner provided by this Act" is general, and no more mandatory than 1872 (17 Stat. 91, R. S. 2319, 2329) was the provision in the Act of ~~1897 (29 Stat. 526)~~ declaring all public lands containing petroleum or other mineral oils to be "free and open to occupation, exploration and purchase by citizens of the United States * * * under regulations prescribed by law"; and yet the President withdrew without direct congressional authority such public lands, and his action was sustained in the Midwest case (236 U. S. 459). But it is insisted that the Act of 1910 only authorizes the temporary withdrawal by the President of public lands "from settlement, location, sale, or entry," and that the application for permit and the lease which may follow discovery of oil under the Act of 1920 are not embraced within those terms. It is apparent, we think, that the Act of 1910 was intended to be of wide scope and recognized the authority of the President temporarily to prevent the alienation of public lands or any interest therein adverse to the United States.

In Mason v. United States, 260 U. S. 545, by Executive order dated December 15, 1908, lands had been "withdrawn from settlement and entry, or other form of appropriation." It was contended that this order did not include appropriations by mining locations. The Court observed: "The words 'settlement and entry,' it is said, apply only to the act of settling upon the soil and making entry at a land office, as, for example, under the homestead laws; that mining lands are acquired, not by settlement or entry, but by location and development; that *that* this process is not covered by the words 'other form of appropriation', limited,

as they must be, by the associated specific words, to those forms of appropriation which are akin to a settlement and entry. * * * *If the appropriation of mineral lands by location and development be not akin to settlement and entry, what other form of appropriation can be so characterized?* (Italics ours.) None has been suggested and we can think of none. * * * Moreover, the circumstances leading up to and accompanying the issuance of the order demonstrate conclusively that its main, if not its only, purpose was to preserve from private appropriation the oil and gas which the lands were thought to contain pending investigation and congressional action, and this purpose would have been subverted by appropriations of the nature here involved quite as much as by other forms. We conclude, therefore, that the mining locations here relied upon fell clearly within the withdrawal order and consequently were prohibited by it."

Under the Act of 1920, the applicant for a permit was required to locate and designate the lands sought in his application. The issuance of a permit and the discovery of "valuable deposits of oil or gas" entitled him to a lease—an interest in the land. This, we think, was akin to location or entry, as used in the Act of 1910.

If, as suggested by counsel for appellee, the Act of 1910 has no application, then it well might be held that an implied power to withdraw was reposed in the President under the Act of 1920. United States v. Midwest Oil Co., 236 U. S. 459.

Under the general mining laws a citizen was free to go upon the public domain. He did the work necessary to discover minerals, staked his claim, recorded notice in the mining district or county records, and his rights became fixed. Forbes v. Gracey, 94 U. S. 762; Belk v. Keagher, 104 U. S. 279. This was true as to public lands containing oil and gas until the Act of February 25, 1920 (41 Stat. 437). Under the provisions of that Act, as already appears, a citizen no longer has a right to go upon public lands of the United States to prospect for oil or gas, unless permitted to do so by the Secretary of the Interior, under such "proper rules and regulations as he may prescribe" (Sec. 13). It is at once apparent that there is a marked distinction between the old law and the new. Under the old law a citizen was free to make explorations as a matter of right.

Under the new law he must apply for the privilege. Until that privilege is granted, through the issuance of a permit, he has no vested interest. It is apparent, we think, that Congress recognized the distinction between the old law and the new and that the President might at any time, if conditions changed, withdraw the public lands from exploration. Under Sec. 13 the Secretary is "authorized" to grant prospecting permits. Under Sec. 14, if a permit has been granted and the permittee has incurred the expense incident to the exploration and discovery of "valuable deposits of oil or gas", he "shall be entitled to a lease." Thus Congress recognized that the mere filing of an application for a permit confers no vested right upon the applicant, but that if a permit be issued and he goes on the land and makes a discovery he has such an interest as must be recognized.

Congress, of course, knew that, if changed conditions rendered advisable the temporary withdrawal by the Executive of the public lands from further exploration, thousands of such applications for permits might be pending. It was careful, therefore, to distinguish between an application for a permit, and the rights that might be acquired under an issued permit. Every applicant for a permit was charged with knowledge that the Executive might temporarily withdraw the lands from further exploration, and that his application was, therefore, subject to such authority of the Executive. We rule that the order of the Secretary rejecting Barton's application for a permit was a valid exercise of power by the Executive.

Mandamus is awarded, not as a matter of right, but in the exercise of a sound judicial discretion, to remedy and not to promote a wrong, to compel the performance of an actual duty rather than to direct the performance of an act which will work public or private mischief. While classed as a legal remedy, its issuance is largely governed and controlled by equitable principles. Duncan Townsits Co. v. Lane, 245 U. S. 308; Arant v. Lane, 249 U. S. 367; Ex Parte Skinner & Eddy Corp., 265 U. S. 86; Work v. Rives, 267 U. S. 175; Payne v. United States, 50 App. D. C. 119, 269 F. 198; Morgan v. Howard, 54 App. D. C. 3, 293 F. 650; Stowell v. Deming, 57 Epp. D. C. 223, 19 F. (2d) 697. In the exercise of a sound judicial discretion, the court must be controlled by settled legal principles.

As observed in the Midwest case (236 U. S. 471), "The President was in a position to know when the public interest required particular portions of the people's lands to be withdrawn from entry or location; his action inflicted no wrong upon any private citizen, and being subject to disaffirmance by Congress, could occasion no harm to the interest of the public at large." In the present case, his orders, issued through the Secretary, were intended to meet an emergency occasioned by the great over-production of oil and gas, the waste incident thereto, and other public considerations. There was available to him the advice of the Attorney General on all questions of law that might be involved. It was necessary to interpret the applicable statutes, and we have expressed the view that they were correctly interpreted; but, in any event, it would require a very clear case to justify a court in arresting and suspending the action of the Executive taken in the public interest. The record does not present such a case.

The judgment is reversed, and the cause remanded for further proceedings not inconsistent with this opinion. Reversed.

Chas. H. Robb, Associate Justice.

Endorsed: No. 5241. Ray Lyman Wilbur, Secretary of the Department of the Interior, Appellant, v. United States of America ex relatione Roy G. Barton. Opinion of the Court per Mr. Justice Robb. Court of Appeals. District of Columbia. Filed December 1, 1930. Henry Hodges, Clerk.

Number 5241.

Mr. Justice Van Orsdel, dissenting:

I am compelled to dissent from the opinion and judgment of my associates.

It is conceded that the applicant Barton possessed all the qualifications necessary under the Leasing Act to entitle him to a permit. In other words, but for the order of the Secretary suspending the operation of the Leasing Act, he would have been compelled to grant Barton's application. We start, therefore, with an applicant entitled to a permit

at the time the order was made suspending the provisions of the Leasing Act.

The Act of 1910, vesting authority in the President to withdraw public lands from "settlement, location, sale, or entry", specifically provides the terms upon which this Executive authority may be exercised. It must be done by a formal proclamation, which the Secretary of the Interior is required, by the terms of the Act, to report to Congress at the next regular session after the date of withdrawal. Prior to the enactment of this statute, lands had been withdrawn by proclamation of the President without any particular authority of statute. Congress, therefore, in the 1910 Act, manifested a clear intention to keep control of the withdrawals of public lands to the extent of specifying the manner and terms under which they could be withdrawn by the President, and in addition requiring notice to be given it of such withdrawals by the Secretary of the Interior in order that the action of the President, if deemed advisable, might be promptly revoked.

This brings us to what was done in this case. No proclamation, formal or otherwise, was ever issued by the President, and no notice of any proclamation was given Congress by the Secretary, as required by the 1910 Act. The order of the Secretary, telegraphed the local land officers, was based upon the following newspaper report under date of March 12, 1929, purporting to express the views of the President: "There will be no leases or disposal of government oil lands, no matter what category they may lie in, of government holdings or government controls, except those which may be mandatory by Congress. In other words, there will be complete conservation of government oil in this administration."

It will be observed that this merely purports to state a future policy which the President might or might not adopt in respect to government oil lands. If was not transmitted by the President to the Secretary of the Interior. The information upon which he based his order was obtained exclusively through the press. The press report merely referred to a declaration said to have been made by the President, which he could only make effective by a formal proclamation. There was, therefore, no proclamation what-

ever under the terms of the 1910 Act which would justify in the remotest degree the action taken by the Secretary of the Interior.

Neither can the action of the Secretary be upheld under the doctrine of acquiescence. It is undoubtedly true that "the acts of the heads of departments, within the scope of their powers, are in law the acts of the President." The President is the head of the Executive Department of the government, and the lawful acts of his subordinates will be presumed to be his acts, but this presumption does not extend to unlawful acts of subordinates. The difficulty here is that the Secretary acted without the scope of his power in the suspension of the oil leasing act. He was totally without power to act until certain statutory conditions had been complied with; namely, the issue of a proclamation by the President.

The cases relied upon in the majority opinion are not in point. In Wilcox vs. Jackson, 13 Pet. 498, a preemption entry had been made upon land set aside and occupied for more than twenty years as a military reservation, on which the government had expended large sums of money under the direction of the Secretary of War. Of course, a long continued use of public land by the government itself for military purposes, or for other purposes, would constitute an occupancy by the government on its own land, amounting to a withdrawal of the land from entry and settlement; and, whether done by direct authority of the President or by the lawful act of the Secretary of War, the President, after this long lapse of time, would be assumed to have acquiesced in the withdrawal and occupation of the land.

The case of Wolsey vs. Chapman, 101 U. S. 755, has even less application to the present case than does the Wilcox case. Here, a large tract of land had been granted to the Territory of Iowa for the development of navigation on the Des Moines river. The execution of the Act was delegated to the Secretary of the Interior, and was accordingly within the lawful scope of the authority vested in him. A controversy arose as to the limits of the land granted—whether it extended beyond a point in the river known as Raccoon Fork. The matter required determination from many angles by the Department of the Interior,

and, to protect the interests of all concerned, the Secretary suspended settlement on the lands in question until the matter could be legally determined. It was said, and properly so, that the act of the Department, being within the scope of its powers, would be regarded in law as the act of the President. The difference between that case and the one at bar is that here there is only one law under which a withdrawal such as we are here considering can be made; namely, through the Proclamation Act of 1910. This act is a specific grant of power by Congress to the President by which he may in his discretion withdraw public lands from entry, sale, or settlement. Being a grant of power belonging to Congress, it should strictly be complied with, and the courts will not imply compliance from circumstances such as those involved in this case.

The case of United States vs. Midwest Oil Company, 236 U. S. 459, has little or no analogy to this case. There, the proclamation of the President, issued before the enactment of the 1910 statute, hence without specific statutory authority, described accurately the territory withdrawn, the character of the land, and the object of withdrawal. The President, doubtful of his authority in the premises, submitted the whole matter to Congress for its approval. It resulted in the prompt enactment of the 1910 statute. The proclamation was prepared with all the formalities and dignity of a document promulgated by the President with a view to affecting great public and private interests. In that case the oil company entered upon the lands after the proclamation was issued. The court, in its opinion, strongly, implied that if the entry upon the lands had been made prior to the issuance of the proclamation by the President, it would have had a different case. Here the application was filed prior to the order of the Secretary, and here there was no proclamation whatever as required by statute.

It is not true that the applicant was required to do nothing on the land before filing his application for a permit. He was required by the Leasing Act to seek out the location, to post notices, giving a description of the land for which application would be made,—if surveyed land, by the lines of survey; if unsurveyed, by descriptive metes and bounds. This constituted an entry upon the land, which

developed into a right with the filing of the application of which the applicant cannot be divested by any act of the Executive Department. This is settled law by numerous decisions of the Supreme Court as to entry upon public lands, such as homestead, preemption, etc. Entry upon oil lands is in every respect entitled to the same legal significance as entry upon lands for the purpose of acquiring title. In Mason v. United States, 260 U. S. 545, it was contended that the words "settlement and entry" applied only to the act of settling upon the soil and making entry in the land office, and that it did not apply to mining lands which it was contended were not acquired by settlement and entry but by location and development, but the court said: "If the appropriation of mineral lands by location and development be not akin to settlement and entry, what other form of appropriation can be so characterized? None has been suggested and we can think of none."

This is not an action to mandamus the President. The writ runs against the Secretary of the Interior and the Commissioner of the General Land Office. The President, so far as I am able to observe, has had nothing to do with this case. The case grew out of orders originated in the Land Department, based upon newspaper rumor; and the action here is to compel the Secretary of the Interior and the Commissioner of the General Land Office to perform purely administrative duties imposed upon them by law. That mandamus will lie for this purpose is too elementary to require citation of authority. While the judgment is to require a departmental officer to perform a purely administrative duty imposed by Congress, the court has no power under the sanction of "judicial discretion" to withhold its mandate, even though, in its judgment, to compel the enforcement might not be in the public interest. The policy of the law belongs to the legislative and not the judicial department of the government.

The court is called upon here to determine purely questions of law, and it is immaterial whether one, or five-thousand, or ten-thousand applicants would be affected by the court's decision. Neither, in the agitated state of the public mind, should the fact that this is an "Oil Case" entitle it to any particular sanctity in the eyes of the law, or furnish adequate ground for the wholesale slaughter of private property rights by judicial decree. The present inquiry

is limited to determining the important questions of law here involved. It would seem, therefore, unnecessary to consider the facts stressed in the majority opinion "that the purpose of such withdrawal was to meet conditions due to great overproduction and to conserve oil and gas in the public interest"; or that, if the judgment be affirmed in this case, "it would probably result in the reinstatement of 'more than five-thousand applications for oil and gas permits on the public lands pending in the Land Office in Washington, and an unknown number in the field offices.'"

These might furnish commendable reasons for a proper and lawful withdrawal of the lands either by formal proclamation of the President or by Act of Congress, but we have hardly reached the period where the laws of the land can be suspended or repealed by the arbitrary methods here employed.

For the reasons stated, the judgment should be affirmed.

Josiah A. Van Orsdel, Associate Justice.

Endorsed: No. 5241. Ray Lyman Wilbur, Secretary of the Interior, Appellant, v. United States of America ex rel. Roy G. Barton. Dissenting Opinion per Mr. Justice Van Orsdel. Court of Appeals, District of Columbia. Filed December 1, 1930. Henry W. Hodges, Clerk.

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA,
OCTOBER TERM, 1930

No. 5251

RAY LYMAN WILBUR, Secretary of the Interior, and CHARLES C. MOORE, Commissioner of the General Land Office, Appellants,

v.

UNITED STATES OF AMERICA ex Rel. H. H. SIMPSON, Appellee

DESIGNATION OF RECORD

The Clerk will please prepare a transcript on application for certiorari to the Supreme Court of the United States in the above-entitled cause, including therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry showing argument of cause.
3. Opinion of the Court.
4. The judgment or decree.
5. This designation.
6. Clerk's certificate.

Homer Hendricks, Homer Hendricks, of Messrs. Miller & Chevalier, 922 Southern Building, Washington, D. C., Attorney for Appellee.

Service of the foregoing motion of Appellee is hereby accepted, Dec. 11, 1930.

(Sgd.) O. F. Graves, Attorney of Record for Appellants.

[Endorsed:] No. 5251. Ray Lyman Wilbur et al., appellants, v. United States ex rel. H. H. Simpson, appellee. Designation of record. Homer Hendricks, of Miller & Chevalier, 922 Southern Bldg., Washington, D. C., Attorney for appellee. Court of Appeals, District of Columbia. Filed Dec. 12, 1930. Henry W. Hodges, clerk.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

I, Henry W. Hodges, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 46 inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals as designated by counsel in the case of Ray Lyman Wilbur, Secretary of the Interior, and Charles C. Moore, Commissioner of the General Land Office, Appellants, vs. United States of America, ex rel. H. H. Simpson, No. 5251, October Term, 1930, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 16th day of December, A. D. 1930.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 2, 1931

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

